IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2439 OF 2007

Byramjee Jeejebhoy Pvt.Ltd. .. Petitioner.

V/s.

Maharashtra State Textile Corporation Limited .. Respondent.

Mr.H.J. Thakkar, Sr. Counsel with Anirudha Joshi & M. Abram i/by M/s.Harilal Thakkar & Co. for the petitioner.

Mr.R.V. Govilkar for the respondent.

CORAM : J.P. DEVADHAR, J.

DATED : 11TH JULY, 2007.

P.C. :

Heard.

2. Rule. Rule made returnable forthwith. By consent of parties taken up for final hearing.

3. In this case, T.E. Suit No.111/141 of 2000 filed by the petitioner in the Court of Small Causes, Bombay was disposed of by a consent decree passed on 16th January, 2007. Thereafter, on 31st January, 2007 the petitioners made an application for execution of the said decree. By the impugned order dated 29th March, 2007 the learned Judge, Court of Small Causes, Bombay instead of ordering issuance of

warrant of possession, suo moto directed appointment of Court Commissioner to visit the disputed property and to find out as to whether there were any occupants in the suit property. Challenging the said order, present Writ Petition is filed.

4. Mr,.Thakkar, learned Senior counsel for the petitioner submits that the impugned order is totally perverse and is not in consonance with the provisions of the Code of Civil Procedure. He submits that any person aggrieved by the decree is entitled to obstruct in the execution of the decree, but in an execution proceedings the Court cannot appoint a Commissioner to find out as to whether there are any person aggrieved by the Consent decree.

5. Mr.Govilkar, learned Counsel for the respondent submits to the orders of the Court.

6. In my view, the impugned order is wholly unsustainable in law, because, firstly, in absence of any application by any of the parties, the learned Judge could not have appointed Court Commissioner of his own. Secondly, no reason is given for appointing a Court Commissioner. Thirdly, if at all any person is aggrieved by the decree, such person is entitled to obstruct in the execution of the decree in the

manner prescribed under the Code of Civil Procedure. Therefore, appointment of a Court Commissioner in the execution proceedings initiated by the petitioner is wholly unjustified, uncalled for and contrary to law.

7. In this view of the matter, impugned order dated 29th March, 2007 is quashed and set aside. The learned Judge is directed to grant warrant of possession in favour of the petitioner subject to fulfilment of the requisite conditions, if any.

8. Rule is made absolute accordingly with no order as to costs.

(J.P. DEVADHAR, J.)